

IN THE SUPREME COURT OF THE STATE OF DELAWARE

THOMAS L. WHITE,	§	No. 442, 2002
	§	
Defendant Below,	§	
Appellant,	§	Court Below: Superior Court of
	§	the State of Delaware in and for
v.	§	Sussex County
	§	
STATE OF DELAWARE,	§	Cr.A. Nos: S01-12-0146I
	§	S01-12-0147I
Plaintiff Below,	§	S01-12-0148I
Appellee.	§	S01-12-0149I
	§	S01-12-0158I

Submitted: December 10, 2002

Decided: December 20, 2002

Before **VEASEY**, Chief Justice, **WALSH** and **HOLLAND**, Justices.

**ORDER**

This 20<sup>th</sup> day of December 2002, upon consideration of the briefs of the parties it appears to the Court that:

(1) Thomas White was convicted of four class-A misdemeanors and one traffic violation after a jury trial. The sentencing judge imposed upon White the maximum sentence of one year for each of the misdemeanors and a fine for the traffic violation. White appeals the sentences of imprisonment—not the fine nor the verdicts themselves.

(2) At trial Officer Lance Skinner testified that on the evening of December 3, 2001, he observed Thomas White drive his car at a high rate of speed and swerve

into his lane of traffic, forcing him to drive off the road. Skinner and two Shelbyville Police Officers, Officers Martinez and Wilson, all of whom were in marked police cars, followed White. After White pulled into the driveway of his mother's home, Martinez told White that he was being stopped for aggressive driving. White walked away from the officers and refused the officers' requests to return to them. Martinez then grabbed White who began to resist arrest. Subsequently White punched Skinner and knocked Wilson to the ground. The three officers were finally able to subdue White after wrestling him to the ground and spraying him several times with pepper spray.

(3) White's version of events at trial differed. He contended that the police officers were driving on the wrong side of the road, forcing him to swerve off the road. The officers followed him home, refused to tell him why he was being stopped, and grabbed him when he asked them to leave his property. White argued that he was defending himself, denied punching Skinner, and indicated that he was punched several times in the face, then maced by Officer Skinner.

(4) After the two-day trial, the jury found White guilty of four class-A misdemeanors: Assault in the Third Degree,<sup>1</sup> two counts of Offensive Touching<sup>2</sup> and

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<sup>1</sup>11 *Del.C.* § 611.

<sup>2</sup>11 *Del. C.* §§ 601(a), (c).

Resisting Arrest.<sup>3</sup> He was also convicted of a traffic violation, Driving Left of Center. The jury acquitted White of the more serious charges, including criminal mischief, and reckless driving.

(5) At sentencing, the trial court reviewed the pre-sentence report and heard testimony from White, his counsel and his mother regarding mitigating factors. The trial court identified aggravating factors, including lack of remorse, repetitive criminal history, similar offenses in the past, and lack of amenability to a lesser sanction. After reviewing the factors the court imposed the maximum sentence of one year at Level V for each of the class-A misdemeanors. The trial court also fined White \$25 for the traffic violation. White appeals the class-A misdemeanor sentences that impose imprisonment.

(6) This Court reviews sentencing orders for abuse of discretion.<sup>4</sup> ““Appellate review of a sentence generally ends upon determination that the sentence is within the statutory limits presented by the legislature.”<sup>5</sup> When the sentence is within the statutory limits, this Court will not find an abuse of discretion unless it is clear that the sentencing judge relied on impermissible factors or exhibited a closed mind.<sup>6</sup> A judge

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<sup>3</sup>11 *Del. C.* § 1257.

<sup>4</sup>*Mayes v. State*, 604 A.2d 839, 842 (Del. 1992).

<sup>5</sup>*Id.* (quoting *Ward v. State*, 567 A.2d 1296, 1297 (Del. 1989)).

<sup>6</sup>*Samuel v. State*, 1997 WL 317362, at \*1 (Del. 1997).

sentences with a closed mind when the sentence is based on a preconceived bias without consideration of the nature of the offense or the character of the defendant.<sup>7</sup> The judge must have an open mind for receiving all information related to the question of mitigation.<sup>8</sup>

(7) Class-A misdemeanors carry a maximum sentence of one year incarceration at Level V.<sup>9</sup> The one year sentences imposed in White's case, then, are within the statutory guidelines.

(8) In determining the appropriate sentence the trial court considered mitigating factors. The judge reviewed the pre-sentence report and heard testimony from White, his counsel, and White's mother prior to imposing the sentence. The trial court also identified aggravating factors which justified imposing the maximum sentence. These factors included White's lack of remorse, his related misdemeanors in the past, a repeated disregard for court orders in the past, and a lack of amenability to lesser sentences. Nothing in the record indicates that the trial court relied on improper information.

(9) Accordingly, we find the trial court did not abuse its discretion by imposing the maximum one year sentence for each of his Class-A misdemeanors. The

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<sup>7</sup>*Ellerbe v. State*, 2000 WL 949625, at \*1 (Del. 1997).

<sup>8</sup>*Shelton v. State*, 744 A.2d 465, 513 (Del. 2000).

<sup>9</sup>11 *Del. C.* § 4206(a).

sentences were within the statutory limits and within the discretion of the sentencing judge.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ E. Norman Veasey  
Chief Justice